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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-358

THOMAS CHARLES ATKINSON
200 Frenchy's Cove #10
Camarillo, California 93012

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about February 14, 2005, the Respiratory Care Board of California (Board) received an application for a Respiratory Care Practitioner License from Thomas Charles Atkinson (Respondent). On or about January 31, 2005, respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on November 9, 2005.

JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless

1 otherwise indicated.

2 4. Section 3710 of the Code states: "The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
4 the Respiratory Care Practice Act]."

5 5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
6 revoke licenses to practice respiratory care as provided in this chapter."

7 6. Section 3732, subdivision (b) of the Code states:

8 "The board may deny an application, or may order the issuance of a license
9 with terms and conditions, for any of the causes specified in this chapter for
10 suspension or revocation of a license, including, but not limited to, those causes
11 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

12 7. Section 3750 of the Code states:

13 "The board may order the denial, suspension or revocation of, or the
14 imposition of probationary conditions upon, a license issued under this chapter, for
15 any of the following causes:

16 " . . .

17 "(d) Conviction of a crime that substantially relates to the qualifications,
18 functions, or duties of a respiratory care practitioner. The record of conviction or a
19 certified copy thereof shall be conclusive evidence of the conviction. . . ."

20 8. Section 3752 of the Code states:

21 "A plea or verdict of guilty or a conviction following a plea of nolo
22 contendere made to a charge of any offense which substantially relates to the
23 qualifications, functions, or duties of a respiratory care practitioner is deemed to be a
24 conviction within the meaning of this article. The board shall order the license
25 suspended or revoked, or may decline to issue a license, when the time for appeal
26 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
27 order granting probation is made suspending the imposition of sentence, irrespective
28 of a subsequent order under Section 1203.4 of the Penal Code allowing the person

1 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
2 the verdict of guilty, or dismissing the accusation, information, or indictment.”

3 9. Section 3752.5 of the Code states:

4 “For purposes of Division 1.5 (commencing with Section 475), and this
5 chapter [the Respiratory Care Practice Act], a crime involving bodily injury or
6 attempted bodily injury shall be considered a crime substantially related to the
7 qualifications, functions, or duties of a respiratory care practitioner.”

8 10. California Code of Regulations, Title 16, section 1399.370, states:

9 “For the purposes of denial, suspension, or revocation of a license, a crime or
10 act shall be considered to be substantially related to the qualifications, functions or
11 duties of a respiratory care practitioner, if it evidences present or potential unfitness
12 of a licensee to perform the functions authorized by his or her license or in a manner
13 inconsistent with the public health, safety, or welfare. Such crimes or acts shall
14 include but not be limited to those involving the following:

15 “ . . .

16 “(c) Conviction of a crime involving driving under the influence or reckless
17 driving while under the influence. . . .”

18 COST RECOVERY

19 11. Section 3753.5, subdivision (a) of the Code states:

20 "In any order issued in resolution of a disciplinary proceeding before the
21 board, the board or the administrative law judge may direct any practitioner or
22 applicant found to have committed a violation or violations of law to pay to the
23 board a sum not to exceed the costs of the investigation and prosecution of the case."

24 12. Section 3753.7 of the Code states:

25 "For purposes of the Respiratory Care Practice Act, costs of
26 prosecution shall include attorney general or other prosecuting attorney fees, expert
27 witness fees, and other administrative, filing, and service fees."

28 13. Section 3753.1, subdivision (a) of the Code states:

1 "An administrative disciplinary decision imposing terms of probation may
2 include, among other things, a requirement that the licensee-probationer pay the
3 monetary costs associated with monitoring the probation."

4 FIRST CAUSE FOR DENIAL OF APPLICATION

5 (Conviction of a Crime)

6 14. Respondent's application is subject to denial under Code sections
7 3750, subdivision (d), 3752, 3752.5 and California Code of Regulations, Title 16, section
8 1399.370, subdivision (c), in conjunction with section 3732, subdivision (b), in that
9 respondent was convicted of crimes substantially related to the qualifications, functions and
10 duties of a respiratory care practitioner. The circumstances are as follows:

11 August 11, 2005 Conviction

12 A. On or about December 29, 2004, respondent and his spouse were
13 involved in an argument at their residence. Respondent pushed his spouse in her
14 chest and into a door jamb. She hit her head on the wall and bit her lip. Respondent
15 swore at her, grabbed her by the throat for about five seconds, pushed her to the
16 ground and kicked her in the back. Respondent's spouse reported the incident to the
17 Channel Islands Police Department and respondent was arrested.

18 B. A complaint was filed against respondent in a criminal proceeding
19 entitled *People v. Thomas Charles Atkinson*, in Superior Court, Ventura County,
20 Case No. 2004051790MA. Respondent was charged with violating Penal Code
21 sections 273.5(a), inflicting corporal injury on a current or former spouse (count 1)
22 and Penal Code section 243(e)(1), battery (count 2).

23 C. On August 11, 2005, respondent was convicted upon his plea of
24 nolo contendere to count 2, battery. He was placed on probation for three years.
25 The court ordered him to complete 52 weekly domestic violence counseling
26 sessions, pay \$300.00 to the Ventura County Women's Shelters, participate for 16
27 hours in the Direct Work Program, pay fees of \$1,493.00 and serve 30 days in
28 county jail. Count 1 of the complaint was dismissed.

1 D. Respondent's conviction of battery, any willful and unlawful use of
2 force or violence upon the person of another, as more fully set forth above,
3 constitutes a conviction of a crime involving bodily injury or attempted bodily
4 injury, and therefore is substantially related to the qualifications, functions or duties
5 of a respiratory care practitioner pursuant to Code section 3752.5.

6 January 8, 1997 Conviction

7 E. On or about October 3, 1996, respondent was arrested by Fullerton
8 police officers. A complaint was filed in a criminal proceeding entitled *People v.*
9 *Thomas Charles Atkinson*, in Superior Court, Orange County, Case No. 96NS3301.
10 Respondent was charged with violating Vehicle Code sections 23152(a), driving
11 under the influence of alcohol and 23152(b), driving with .08% or higher blood
12 alcohol level. On January 8, 1997, respondent was convicted of driving with .08%
13 or higher blood alcohol level. He was placed on probation for three years and was
14 ordered to complete a nine month alcohol treatment program.

15 F. Respondent's conviction for driving with .08% or higher blood
16 alcohol level is substantially related to the qualifications, functions and duties of a
17 respiratory care practitioner. The conviction reflects a lack of sound professional
18 and personal judgment that is relevant to a respiratory care practitioner's fitness and
19 competence to practice respiratory care. In this regard, alcohol consumption quickly
20 affects normal driving ability, and driving with .08% or higher blood alcohol level
21 threatens personal safety and places the safety of the public in jeopardy. It further
22 shows a disregard of medical knowledge concerning the effects of alcohol on vision,
23 reaction time, motor skills, judgment, coordination and memory, and the ability to
24 judge speed, dimensions and distance. The conviction also demonstrates an inability
25 or unwillingness of respondent to obey the legal prohibition against drinking and
26 driving and constitutes a serious breach of a duty owed to society.

27 PRAYER

28 WHEREFORE, Complainant requests that a hearing be held on the matters

1 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

2 1. Denying the application of Thomas Charles Atkinson for a
3 Respiratory Care Practitioner License;

4 2. Directing Thomas Charles Atkinson to pay the Respiratory Care
5 Board the costs of the investigation and enforcement of this case, and if placed on
6 probation, the costs of probation monitoring;

7 3. Taking such other and further action as deemed necessary and
8 proper.

9 DATED: March 13, 2006

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12 Original signed by Liane Zimmerman for: _____
13 STEPHANIE NUNEZ
14 Executive Officer
15 Respiratory Care Board of California
16 Department of Consumer Affairs
17 State of California
18 Complainant
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